



2024:DHC:6518-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 15.05.2024

Judgment Pronounced on: 29.08.2024

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**LPA 695/2022 & CM APPL. 52064/2022, CM APPL. 61953/2023,
CM APPL. 10407/2024**

THE MINISTRY OF HOME AFFAIRS & ANR. Appellants

Through: Mr Kirtiman Singh, CGSC with Ms Vidhi Jain, Mr Aryan Agrawal and Mr Waize Ali Noor, Advocates for appellant no.1/UOI.

Ms Nidhi Raman, CGSC with Mr Zubin Singh, Advocate for appellant no.2.

versus

SYNDICATE INNOVATIONS INTERNATIONAL LIMITED &

ORS.

..... Respondents

Through: Mr Joy Basu, Senior Advocate with Mr Kanak Bose, Mr Bhupesh Narula, Ms Rinku Narula, Ms Poonam Nagpal, Mr Anugrah Ekka and Mr Swetabh Sharma, Advocates for R-1.

Mr Anurag Ojha, Senior Standing Counsel with Mr Subham Kumar, Mr Kumar Abhishek and Mr Satyam Parashar, Advocate for R-2.

Mr Shashi Pratap Singh and Ms Urvashi, Advocates for R-3/Delhi Police.

Mr Pradeep Kant, Senior Advocate with Mr Divyanshu Sahay, Ms Shradha Narayan, Mr Akshay Sahay, Mr Simranjeet Singh Rekhi and Mr Shubham Kumar, Advocates for Intervenor.



CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE AMIT BANSAL
[Physical Hearing/Hybrid Hearing (as per request)]

AMIT BANSAL, J.:

1. The present appeal is directed against the impugned judgment dated 7th October, 2022, passed by the learned Single Judge in W.P.(C)10143/2022. By the said judgment, the aforesaid writ petition has been allowed and the consignment of the writ petitioner comprising *inter alia*, ‘frames’ and ‘slides’ of handguns, which had been seized by the respondents in the writ petition, has been ordered to be released.

BRIEF FACTS AND LITIGATION HISTORY

2. Brief facts relevant for the determination of the issues in the present appeal are set out below:

2.1. The writ petitioner/respondent no.1 herein, Syndicate Innovations International Limited (hereinafter referred to as “Syndicate”) is a public limited company engaged in the manufacture of firearms and ammunitions. Syndicate had obtained a manufacturing license issued by the Ministry of Home Affairs (in short “MHA”)/appellant no.1 herein on 12th March, 2018.

2.2. Section 10 of the Arms Act, 1959 (hereinafter referred to as the ‘Act’), prohibits the import and export of arms and ammunitions without a license. *Via* notification dated 1st November, 2018 issued by the MHA, the powers and functions under Section 10 of the Act with regard to issuance of licences for import and export of arms and ammunitions were delegated to the Director General of Foreign Trade (hereinafter “DGFT”), Ministry of Trade and Commerce [appellant no.2 herein].



2.3. On 23rd October, 2020, Syndicate was granted a license to import various parts of arms and ammunitions by the DGFT. This license, *inter alia*, included import of 'Frames' and 'Slides' of a handgun.

2.4. Upon the grant of license, Syndicate placed an order for import of 500 pieces each of 'frames' and 'slides' from an exporter in Turkey. The said consignments arrived in India *via* Bill of Entry No.9037350 dated 9th June 2022 and Bill of Entry No.9038081 of even date.

2.5. The officials of the Delhi Police/respondent no.3 herein (also the respondent no.3 before the writ court), in terms of Rule 88(5) of the Arms Rules, 2016, (hereinafter referred to as the '2016 Rules') inspected the aforesaid consignments on 15th June, 2022. During inspection, the Delhi Police found out that the imported 'frames' and 'slides' were pre-fitted with certain operational parts. The 'frames' imported by Syndicate were fitted with the following components:

- a. Hammer
- b. Catch magazine
- c. Safety lock
- d. Safety lock support pin
- e. Trigger Action Mechanism Part
- f. Trigger

Further, the componenets pre-fitted in the 'slides' are as follows:

- i. Firing Pin
- ii. Spring of firing pin
- iii. Lock plate of firing pin
- iv. Extractor

2.6. In view of the above, the Delhi Police, by a communication dated 21st June, 2022, sought clarification from the DGFT whether Syndicate could have imported 'frames' and 'slides' with the aforesaid pre-installed operational



parts.

2.7. Since the goods imported by Syndicate were not released, Syndicate approached this Court on 30th June, 2022 by way of the writ petition [W.P.(C) 10143/2022], from which the present appeal arises. *Vide* order dated 13th July, 2022, the writ court directed the DGFT to furnish its response to the aforesaid query of the Delhi Police.

2.8. Pursuant to the aforesaid direction, the DGFT issued a communication dated 15th July, 2022, to the Delhi Police stating that ‘frames’ and ‘slides’ are not specifically defined in the Foreign Trade (Development and Regulation) Act, 1992 (hereinafter the ‘FTDR Act’) or the Foreign Trade Policy, 2015-2020 (hereinafter the ‘FTP’). It also stated that the imported consignments have to be considered subject to the provisions of the Arms Act, 1959 and the Arms Rules, 2016 and the manufacturing license granted by the MHA. The Delhi Police was advised to directly seek further information from the MHA.

2.9. Accordingly, the Delhi Police approached the MHA for appropriate clarifications *via* communication dated 21st July, 2022.

2.10. The MHA, *vide* communication dated 3rd August, 2022, issued an advisory wherein it was stated that:

- i. The definition of ‘parts and components’ under Rule 2(37) of the 2016 Rules was an ‘inclusive’ one;
- ii. ‘Slides’ and ‘Frames’ cannot be pre-fitted with other licensable parts for the purpose of manufacturing as well as import. Since, the license issued to Syndicate was with respect to import of ‘frames’ and ‘slides’ alone, Syndicate could not have imported the additional operational parts, *viz* ‘hammer’, ‘firing pin’ and ‘extractor’.
- iii. Additionally, import of arms and ammunitions is also subject to Rule



57(4) of the 2016 Rules.

2.11. In light of the aforesaid advisory issued by MHA, the import consignment of Syndicate was not released.

2.12. At the hearing before the writ court on 30th August, 2022, it was submitted on behalf of the appellants that in terms of Rule 88(2) of the 2016 Rules, an importer would require a license under Form X and Syndicate had failed to obtain such a license. A detailed order was passed by the learned Single Judge on 30th August, 2022, noting the statement of the counsel for the appellants that the appellants shall consider the grant of *ex-post facto* license to Syndicate in order to regularize the imported consignments.

2.13. On 14th September, 2022, the *ex post facto* license in Form X was issued in favour of Syndicate by the DGFT.

2.14. The writ petition was taken up for final hearing on 15th September, 2022 and 21st September, 2022 and the judgment was reserved.

3. The learned Single Judge allowed the writ petition *vide* the impugned judgment dated 7th October, 2022. After a detailed analysis of the various provisions of the Arms Act, 1959, the Arms Rules, 2016, the FTDR Act and the FTP, the learned Single Judge rejected the contention of the appellants that 'frames' and 'slides' pre-fitted with other operational parts cannot be validly imported without a specific license in respect of the pre-fitted parts. Accordingly, it was held that the imported consignments could not be said to be violative of the import license granted to Syndicate. It was further held that the permission under Rule 57(4) of the 2016 Rules is only required in cases where the parts sought to be imported cannot be manufactured in India. In the present case, the appellants have failed to substantiate that the aforesaid



parts cannot be manufactured in India. In view thereof, the appellants were directed to release the import consignments subject to Syndicate complying with other statutory formalities and depositing the demurrage charges, as applicable.

4. Aggrieved by the aforesaid judgment, the Union of India through the MHA (appellant no.1) and DGFT (appellant no.2) filed the present appeal.

PROCEEDINGS IN THE PRESENT APPEAL

5. The present appeal came up for hearing before a Co-ordinate Bench of this Court on 2nd December, 2022 and it was directed that the parties shall maintain *status quo*.

6. Subsequently, *vide* order dated 6th February, 2023, the import consignments were directed to be released to Syndicate on *suparatnama* as an interim measure, *albeit*, with the condition that Syndicate shall not dispose of any of the items therein.

7. The intervener before the Writ Court i.e., SIAL Manufacturers Pvt. Ltd. had also filed an appeal being, LPA 25/2023 against the impugned judgment. *Vide* order dated 18th January, 2024, passed by this Bench, the aforesaid appeal was disposed of, with liberty to the Intervenor to make submissions in the present appeal.

8. An application (C.M.No. 61953/2023) was filed on behalf of Syndicate seeking modification of the order dated 6th February, 2023, and permission of the Court was sought to utilise the imported items in manufacturing finished products, i.e., handguns. In the meanwhile, the MHA *vide* communication dated 12th February, 2024 permitted Syndicate to commence commercial production.



9. In the aforesaid backdrop, submissions of the parties in the present appeal were heard on several dates. Written submissions have also been filed by the parties in support of their respective arguments.

SUBMISSIONS ON BEHALF OF THE PARTIES

10. Mr. Kirtiman Singh, learned CGSC appearing on behalf of the appellant no.1/MHA has made the following arguments to assail the impugned judgment:

- I. The interpretation given to Rule 2(37) of the 2016 Rules in the impugned judgment is erroneous insofar as ‘parts and components’ are held to be limited to the extent of the items mentioned in the second part of Rule 2(37). It is submitted that Rule 2(37) provides an inclusive definition of ‘parts and components’. In this regard, reliance has been placed on *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*, (2019) 8 SCC 416.
- II. The impugned judgment incorrectly relies on *P. Kasilingam v. P.S.G. College of Technology*, 1995 (Supp) 2 SCC 348, to hold that the definition of ‘parts and components’ is exhaustive. In this regard, reliance has been placed on *DAV College Trust & Management Society v. Director of Public Institutions*, (2019) 9 SCC 185.
- III. ‘Frames’ and ‘slides’ are independent parts in themselves and do not require pre-fitment of any other part in order to make them ‘operational’. Therefore, Syndicate cannot be allowed to import ‘frames’ and ‘slides’ with other parts embedded in them. In this regard, reliance has been placed on the Additional Affidavit dated 14th August, 2023 filed on behalf of the MHA.



- IV. A perusal of Chapter 93 of the 'Harmonised Commodity Description and Coding System' read with the Explanatory Notes published by the World Customs Organization establishes that parts and accessories of a firearm are recognised independently. Therefore, a separate license was required *qua* each part embedded in the 'slides' and 'frames'.
- V. If the interpretation of Rule 57(4) of the 2016 Rules, in the impugned judgment is sustained, it would lead to a situation where any part, which can be manufactured locally, would be allowed to be imported by the manufacturer without requirement of any license or permission being obtained from the MHA.
11. *Per contra*, Mr. Joy Basu, learned Senior Counsel appearing on behalf of Syndicate has made the following submissions:
- I. The impugned judgment has correctly observed that the definitions of 'main firearm component' and 'parts and components' under Rules 2(29) and 2(37) are exhaustive and have to be limited to the extent of the items covered thereunder. Since 'firing pin', 'extractor' and 'hammer' do not find mention in the aforesaid rules, no separate licence could be obtained for their import.
 - II. 'Frames' and 'slides' are not defined either in the Arms Act, 1959 or the Arms Rules, 2016. In the absence of such a definition, it cannot be said that 'frames' and 'slides' cannot be pre-fitted with other parts. Further, the appellants have failed to provide any evidence to prove to the contrary. Reliance has been placed on the Additional Affidavit filed on behalf of Syndicate wherein industry practice in the form of expert opinions has been placed on record to show that 'frames' and 'slides' come with pre-fitted parts.



III. Form VII and Form X-A prescribed in the 2016 Rules cannot be relied by the appellants to submit that Syndicate ought to have obtained a license in respect of the sub-components that were pre-fitted with the import license as the aforesaid forms are in respect of manufacture and export respectively. Import of arms and ammunitions is governed by Form X which does not mention the aforesaid pre-fitted parts, as is correctly observed in the impugned judgment.

IV. Form-X license issued *ex-post facto* to Syndicate on 14th September, 2022, which gave permission to Syndicate to import ‘frames’ and ‘slides’, without any exclusions or qualifiers is an admission on behalf of the appellants that import of ‘frames’ and ‘slides’ pre-fitted with ‘firing pin’, ‘extractor’ and ‘hammer’ is permissible.

V. Rule 57(4) would not be applicable in the present case as Syndicate has been granted a licence under Form X. Notwithstanding the above, it is stated that 57(4) would only apply in those cases where the parts to be imported cannot be manufactured in India, in line with the observations in the impugned order.

12. Mr Pradeep Kant, learned Senior Counsel appearing on behalf of the Intervener/SIAL Manufacturers Pvt. Ltd. has argued that Syndicate has been importing additional licensable components under the garb of ‘frames’ and ‘slides’. Further, Syndicate could not have been granted a license under Form-X on an *ex post facto* basis and the same is untenable in the eyes of law.

13. We have heard the counsels for the parties and perused the material on record.

14. The principal bone of contention between the disputants is whether the import license granted to Syndicate for ‘frames’ and ‘slides’ would include



other parts that are pre-fitted into the said ‘frames’ and ‘slides’ under the provisions of the Act and the 2016 Rules. It is the case of Syndicate that issuance of Form X is an admission that no separate license has to be obtained. *Per contra*, it is the case of the appellants as well as the Intervenor that Syndicate was required to take a separate license in respect of pre-fitted parts in addition to the license issued under Form X. Further, permission under Rule 57(4) of the 2016 Rules was also required to be taken by Syndicate.

ANALYSIS AND FINDINGS

15. At the outset, it may be pertinent to take note of a significant development that took place during the pendency of the writ petition, i.e., the *ex post facto* issuance of Form X to Syndicate on 14th September, 2022. For the ease of convenience, the aforesaid Form X issued to Syndicate is extracted below:

“Form X
COMPOSITE IMPORT/EXPORT LICENCE FOR ARMS AND AMMUNITION

<i>Category of Item as per Schedule I – Permissible Arms (Category III(b))</i>			
<i>Licence No.</i>	<u>0519244138 dated 23.10.2020</u>	<i>UIN</i>	0519244138
<i>Port of Import</i>	<i>Delhi Air Cargo (INDEL4)</i>	<i>Port of Export</i>	NA

1.	<i>Name, description and address of the licensee</i>	<i>Syndicate Innovations International Limited, Plot No. E-14, Sahibabad, Industrial Area, Site – IV, Ghaziabad, Uttar Pradesh – 201010</i>		
2.	<i>Name, description and address of agent (if any) authorised for the purpose of this consignment</i>	NA		
3.	<i>Number of packages</i>	NA		
4.	<i>Arms, Description & Quantity</i>	<i>SI. No.</i>	<i>Description</i>	<i>Quantity (nos)</i>
		1.	<u>Parts of handgun –</u>	68,500



			<u>Frame</u>	
		2.	<u>Parts of Handgun – Slides</u>	68,500
		3.	Parts of Handgun – Cylinder	68,500
		4.	Parts of Air Weapon – Cylinder (Drum)	28,000
		5.	Parts of Air Weapon – Slide with Barrel	6,500
5.	AMMUNITION	NA		
	Description	NA		
	Weight (in Kgs) or Number	NA		
6.	Purpose for which required	<u>Actual User – for Manufacturing of Arms</u>		
7.	In case of Import, place where article imported are to be stored or deposited	Syndicate Innovations International Limited, Plot No. E – 14, Sahibabad, Industrial Area, Site – IV, Ghaziabad, Uttar Pradesh – 201010.		
8.	Place of despatch and route	NA		
9.	Place of destination	NA		
10.	Name, description and address of the consignee	NA		
11.	Period of validity of Licence	22.10.2022		

16. A perusal of the aforesaid Form clearly demonstrates that Syndicate was issued an unqualified and unconditional license to import ‘frames’ and ‘slides’, which are parts of handguns, along with other parts and components. The Form neither provides a definition for ‘frames’ or ‘slides’, nor does it state that ‘frames’ and ‘slides’ cannot be imported with pre-fitted sub components. The Form also does not mention that there was a further requirement of the importer/Syndicate obtaining separate import licenses in respect of the embedded parts.

17. Pertinently, the aforesaid Form X was issued when there was already a



lis pending before the Writ Court wherein a specific issue was raised whether a separate import license is required for import of embedded sub-components. Furthermore, the Delhi Police had inspected the import consignments of Syndicate as they had already arrived in India and the appellants were aware that the ‘frames’ and ‘slides’ were pre-fitted with sub-components. Yet, while issuing Form X, the appellants did not object to the fact that the imported ‘frames’ and ‘slides’ were pre-fitted with other parts such as ‘firing pin’, ‘extractor’ and ‘hammer’ which, as per the appellants, required a separate license. Nor did the appellants insist on Syndicate obtaining a separate license for these pre-fitted parts.

18. In this regard, reference may also be made to the communication dated 15th July, 2022 issued by the DGFT to the Delhi Police [page 327 of the electronic file], wherein it has been specifically stated that the imported consignment may be considered in terms of the manufacturing license granted to Syndicate by the MHA. Concededly, the aforesaid manufacturing license was granted to Syndicate in respect of the manufacture of complete firearms. It has also been admitted on behalf of the appellants that a manufacturer having a license for a complete firearm is not required to obtain separate licenses for parts and components thereof. Therefore, it would necessarily follow that an entity which imports components such as ‘frames’ and ‘slides’ would not require separate licenses for sub-components fitted in such ‘frames’ and ‘slides’.

19. Moreover, ‘firing pin’, ‘extractor’ or ‘hammer’ are being imported by Syndicate for the manufacture of a complete firearm and not for the purposes of resale. Therefore, taking into account that these sub-components are being imported only for the purpose of manufacture of finished products and



coupled with the fact that these components are pre-fitted to ‘frames’ and ‘slides’, there would be no rationale for obtaining separate licenses *qua* them.

20. It is pertinent to note that the objections raised by the appellants were only in respect of some of the parts that were pre-fitted in the ‘frames’ and ‘slides’ imported by Syndicate, i.e., ‘hammer’, ‘extractor’ and ‘firing pin’. Concededly, the appellants did not raise any objection in respect of other sub-components such as ‘catch magazine’, ‘safety lock’, ‘safety lock support pin’, ‘trigger’, ‘trigger action mechanism part’, ‘spring of firing pin’ and ‘lock of firing pin’, which were pre-fitted inside the ‘frames’ and ‘slides’ and also mentioned in the communication dated 21st June, 2022 sent by the Delhi Police to the DGFT.

21. It seems that the appellants objected to ‘hammer’, ‘extractor’ and ‘firing pin’ only because these found mention in the Explanation given in Form VII and Form X-A, whereas the other components were not mentioned therein. The Explanation given in both the forms, being identical, is reproduced hereunder:

“Explanation.—This Form shall apply to firearms and their following parts, namely:—
(a) Barrel;
(b) Cylinder;
(c) Bolt;
(d) Breech Block;
(e) Slide;
(f) Firing Pin;
(g) Frame or Receiver;
(q) Extractor;
(h) Hammer/Striker.”

22. In our view, reliance placed by the appellants on the Explanation provided in the aforesaid Forms is completely misplaced. It is pertinent to note that the aforesaid Forms VII and X-A are for the purposes of manufacture



and export respectively. The learned Single Judge has correctly held that the aforementioned components were added in Form VII which is the license issued to a manufacturer, as there could be a manufacturer specific to the aforesaid components. The relevant paragraph has been set out below:

“56. The MHA then proceeds to record that the declarations which were made by the petitioner here while seeking permission to import Slides and Frames cannot be said to encompass the import of other licensable parts. The aforesaid opinion as expressed is also clearly rendered unsustainable since the petitioner did hold a license for manufacture of a complete firearm. Before this Court it was conceded on behalf of the respondents that if the manufacturer had been granted a license to manufacture a complete firearm it was not placed under any additional statutory obligation to obtain separate licenses for manufacturing parts or components of a firearm. In fact such an interpretation cannot also be sustained upon a reading of the various conditions which stand imposed and attached to the grant of a license to manufacture in terms of Form VII. The Form and the Explanation clarifies that it would apply to firearms and its various parts such as barrel, cylinder, bolt, breech block, slide, firing pin, frame or receiver, extractor and hammer/striker. The sub categorisation of the various components of a firearm appears to have been introduced to deal with a contingency where a manufacturer may, as distinct from making a complete firearm, choose to apply for the grant of a license to manufacture any of its individual components as specified in clauses (a) to (i) of the Explanation to Form VII. The further conclusions which are recorded in the advisory of the MHA and more particularly in Para 5 thereof again proceed on the premise that the import of Frames and Slides must necessarily be understood to mean that they would not be embedded with any additional parts and components of a firearm. That contention, for reasons aforesaid, the Court has been unable to countenance or accept.”

23. This reasoning also finds support from the definition of “manufacturing” given in Rule 2(31), which has been set out below:

*“(31) “manufacturing” means making, producing or assembling—
(i) a complete firearm;
(ii) a pressure-bearing **part or component of a firearm** (e.g. barrel, slide, cylinder, **bolt, breech lock, firing pin**, etc.);
...”*

24. A perusal of the above definition reflects that “manufacturing” includes manufacturing of parts and components of firearms as well. What follows is



that if any manufacturer in India is desirous of manufacturing ‘firing pin’, ‘extractor’, ‘hammer’ or any other components mentioned in the Explanation of Form VII on a stand alone basis, he would require a separate manufacturing license for the same.

25. Since there can be a possibility of a manufacturer being engaged in the manufacture of only certain sub-components, it necessarily follows that such a manufacturer would also be given the liberty to export the manufactured sub components. It is in this backdrop that the aforesaid Explanation has been added to Form X-A, which is the form prescribed for exports.

26. Significantly, the aforesaid components such as ‘firing pin’, ‘extractor’ and ‘hammer’ are conspicuously absent in Form X, which is the requisite form for the purpose of import. This would imply that it was not the intention of the appellants that an importer should separately obtain an import license in respect of the aforesaid components.

27. Another aspect that needs to be highlighted is that the appellants have not placed on record any evidence to show that ‘frames’ and ‘slides’ are standalone components and do not envisage pre-fitted sub-components. This has been specifically recorded in the impugned judgement. In this regard, the observations made in the impugned judgment are set out below:

“50. Tested on the aforesaid principles, it was incumbent upon the respondents to have placed material on the record to establish that a Frame or a Slide is, in an industrial or commercial sense, not recognised to be an article fitted with any other component of a firearm. In order to sustain the submission that the terms of the import permission were violated, it was imperative for the respondents to have proven that Frames and Slides are not understood or envisaged to be fitted with other operational parts of a firearm. Since the burden to prove a violation of the import permit lay squarely on their shoulders, it was necessary for them to establish that Frames and Slides when referred to in industrial or trade circles relating to firearms, are never envisaged to be pre-fitted with a safety lock, trigger action mechanism, firing



pin or extractor. This they have not only woefully failed to establish, in fact, no submissions along these lines were in fact addressed.

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xxx

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54. The respondents have failed to prove that Frames and Slides as commonly understood or construed in industry or trade circles are not envisaged to be pre-fitted with additional components of a firearm. The respondents have thus failed to establish that the imported items would fall foul of the common parlance or the functionality tests as commonly deployed in such situations.”

28. Our aforesaid findings can be summarised in the following manner:
- i. The sub-components such as ‘firing pin’, ‘extractor’ and ‘hammer’, in respect of which the appellant raised objections were specifically mentioned only in the ‘Explanation’ in Form VII and Form X-A, which were in respect of ‘manufacture’ and ‘export’ respectively. These sub-components do not find a mention in Form X, which is the relevant Form in the present case in respect of imports made by Syndicate.
 - ii. Form X, which was subsequently issued by the appellant to Syndicate, gave specific permission to Syndicate to import ‘frames’ and ‘slides’ without any qualification or reservation to the effect that such ‘frames’ and ‘slides’ are not pre-fitted with other sub-components.
 - iii. The appellants have failed to place any evidence or material on record to demonstrate that ‘frames’ and ‘slides’ are not commercially known to exist with pre-fitted sub-components.

29. In light of the aforesaid findings, we are of the view that the objection of the appellants did not stem from Rule 2(37) of the 2016 Rules. If the



definition of ‘parts and components’ provided in Rule 2(37) of the 2016 Rules was the basis of objection, the appellants would have also raised objection in respect of other components such as ‘catch magazine’, ‘safety lock’, ‘safety lock support pin’, ‘trigger’, ‘trigger action mechanism part’, ‘spring of firing pin’ and ‘lock of firing pin’, which were found pre-fitted in the ‘frames’ and ‘slides’ imported by Syndicate, as reflected in the communication dated 21st June, 2022 sent by the Delhi Police to the DGFT. Therefore, the issue whether the definition of ‘parts and components’ under Rule 2(37) of the 2016 Rules is exhaustive or not, need not detain us. Similarly, we also need not go into the issue whether the pre-fitted components are to be treated as separate components in terms of the Foreign Trade Policy 2015-20, Indian Trade Classification based on Harmonized System Classification and the Harmonised Commodity Description and Coding System.

30. The issuance of the aforesaid Form X would also nullify the objection taken by the appellants that Syndicate, as an importer had to compulsorily apply for an import license with the MHA in terms of Rule 88(2). As noted above, the power to issue licenses for import and export of arms and ammunitions under the Act were delegated by the MHA to the DGFT *via* notification dated 1st November, 2018. This would show that there was no mandatory requirement for an importer to separately apply to DGFT for an import license under Rule 88(2) of the Rules, once an import license has already been granted by the DGFT, as the issuing authority was the same. Like the earlier license granted by the DGFT on 23rd October, 2020, license granted under Form X also is in respect of the same parts, being parts of handguns – frames, slides and cylinders and bears the same license number i.e., License No. 0519244138, as was there in the initial import license granted



by the DGFT. In fact, the description of the items mentioned in the earlier license and the allowed quantity thereof was identical to the license issued in Form X. Therefore, the license issued under Form X was a mere reiteration of the import license granted on 23rd October, 2020.

31. In fact, in its communication dated 20th October, 2022, the DGFT has specifically stated that ‘there is no provision in policy for issuance of Form X against import authorizations issued under restricted items’. Once, the MHA had delegated its powers to issue import license to DGFT in terms of notification dated 1st November, 2018, it would defy logic as to why MHA would require an importer to approach it for issuance of import license.

32. It is also worth noting that the absence of a license under Form X was never raised by the appellants as one of the reasons for not clearing the import consignments of Syndicate. It was not even raised in the advisory sent by the MHA to the DGFT on 3rd August, 2022. The said ground was raised for the first time as an oral submission on behalf of the appellant before the writ court on 30th August, 2022.

33. In view of the issuance of Form X to Syndicate, the requirement of permission under Rule 57(4) of the 2016 Rules would also not survive. The Form X license granted to Syndicate was unconditional and unqualified and did not refer to any permission that may be required under Rule 57(4) of the 2016 Rules. Once Form X has been issued by the competent authority, it would amount to a deemed clearance of the competent authority under Rule 57(4) of the 2016 Rules.

34. We also find force in the submission on behalf of Syndicate that if permission under Rule 57(4) of the 2016 Rules was required, the same would be required right at the inception, i.e., when import licenses were being issued



to them. Such a requirement cannot be brought at a stage when the import consignments have already arrived in India in terms of the import license granted. It is a matter of record that the requirement of permission under 57(4) of the 2016 Rules was raised for the first time in the advisory issued by the MHA on 3rd August, 2022. Admittedly, there is no separate application prescribed for availing permission under Rule 57(4) of the 2016 Rules.

35. Even otherwise, the learned Single Judge has rejected the interpretation of Rule 57(4) of the 2016 Rules as canvassed by the appellants. In this regard, the observations of the learned Single Judge are set out below:-

*“58. It is pertinent to observe that neither the MHA nor the DGFT have asserted that the import of firearms is prohibited. It was also not their case that the Act and the 2016 Rules permit the import of only such arms or parts thereof which cannot be manufactured locally. Although the MHA in its advisory has alluded to Rule 57(4), it has not taken the stand that the Act and the 2016 permit import of only such parts of arms which are not being manufactured locally. As this Court views Rule 57(4) it appears to place an obligation upon an importer to obtain the requisite permission of the MHA only in a case where the article proposed to be imported is one which is either not being manufactured or possible to be manufactured locally. **The Court thus finds itself unable to conversely read or interpret Rule 57(4) as prohibiting the import of arms or parts thereof which can be manufactured locally, a view which was commended for acceptance by Mr. Endlaw, learned counsel for the Intervener only.***

*59. The acceptance of the interpretation to Rule 57(4) as advocated by Mr. Endlaw would not only run contrary to the scheme of the Act but also the FTP as would be clear from the reasons which are recorded hereinafter. Firstly, and when tested on the anvil of the Act and the 2016 Rules, the Court notes that Section 10 of the Act read with Rule 88 of the 2016 Rules only introduces a stipulation of a license being obtained for the purposes of import. **Neither those provisions nor the various applications and forms connected with the subject of import, incorporate a prohibition against parts of arms which can be manufactured locally. The MHA while delegating its powers comprised in Section 10 of the Act to the DGFT also does not introduce any such prohibition. In fact, if Rule 57(4) were to be read in the manner as suggested by and on behalf of the Intervener, there would exist no justification for the MHA delegating its powers of licensing comprised in Section 10 read with Rule 88. This since***



*if the parts of arms were such as were not being manufactured locally, the importer would still be obliged to follow the route of Rule 57(4). Quite apart from the fact that the aforesaid view was neither advocated by the MHA nor the DGFT and is not the stand reflected in their orders or the affidavits filed in these proceedings, the acceptance of this line of argument would give rise to an irreconcilable conflict between Rule 57(4) and Rule 88 of the 2016 Rules and be contrary to the letter of the delegation notifications issued by the MHA. **In any case the act of the respondents in granting the Form X license subsequently and during the pendency of the writ petition is clear evidence that they do not view the import in question being prohibited on lines as suggested by and on behalf of the Intervener.***

36. We see no reason to interfere with the aforesaid findings of the learned Single Judge.

37. It is relevant to note that Syndicate has also filed an affidavit on 1st July, 2023, giving details of imports made by various manufacturers of main firearm components, without obtaining any import license in Form X. Significantly, the appellants have not rebutted the contents of the said affidavit.

38. Therefore, in our considered view, both the objections taken by the respondent with regard to requirement of a Form X as well as permission under Rule 57(4) of the 2016 Rules were taken as an afterthought. The *ex post facto* issuance of the aforesaid Form X amounts to a clear admission on the part of the appellants that as long as an importer held an import license for 'frames' and 'slides', the importer was not required to apply for a separate license under Rule 88(2), nor did it require a permission under Rule 57(4) of the 2016 Rules.

39. On behalf of the Intervenor, Sial Manufacturers Private Limited, it has been strenuously argued that appellants could not have issued Form X to Syndicate on *ex-post facto* basis.



40. Our attention has been drawn to Rule 88(2) of the 2016 Rules which requires that an importer who wants to import a fire arm or parts of firearm has to file an application for grant of a license in Form X at least 21 days before the shipment. It is submitted that no such application was submitted on behalf of Syndicate and therefore, issuance of Form X in favour of the Syndicate was in violation of the rules.

41. It is further submitted on behalf of the Intervenor that permission of the Ministry of Home Affairs was a mandatory requirement in terms of Rule 57(4) of the 2016 Rules before any import of parts of arms and ammunition is made. Before issuing an import license, DGFT has to ensure compliance with all provisions of the Arms Act.

42. Admittedly, the Intervenor is a direct competitor of Syndicate and its sole purpose for seeking to intervene in the present matter is to ensure that Syndicate is not in a position to import parts and components required for its manufacturing operations.

43. On a pointed query from the Court on 15th May, 2024, whether the Intervenor or its associate companies are complying with the requirements canvassed on behalf of the Intervenor, counsel for the Intervenor could not give any response.

44. At the hearing on 3rd May, 2024, counsel appearing on behalf of Syndicate had handed over a list of imports made by an associate company of the Intervenor, i.e., Lucknow Arms Corporation giving details of the parts of the fire arms imported by the said entity without any approval under Rule 57(4) of the 2016 Rules or Form X. This has not been refuted by the Intervenor. Clearly, the Intervenor cannot be heard to canvass a regulatory



regime in respect of Syndicate which itself is not being followed by the intervenor or its associate companies.

45. In any event, all the aforesaid issues raised on behalf of the Intervener have been considered above and have been found to be devoid of merits.

CONCLUSION AND RELIEF

46. In view of the above discussion, we see no grounds to interfere with the impugned judgment. Accordingly, the appeal is dismissed.

47. Consequently, the limitation imposed on Syndicate *via* order dated 6th February, 2023, restraining them from disposing of the goods imported by them *via* Bill of Entry No.9037350 dated 9th June 2022 and Bill of Entry No.9038081 of even date, shall stand dissolved.

48. The present appeal, along with all pending applications, stands disposed of.

POSTSCRIPT

49. The present case is illustrative of a complete state of confusion and lack of clarity that prevails in the Government regulations in relation to the arms and ammunition industry. The appellants themselves are not clear about the applicability of different rules in different situations, thereby resulting in the regulatory regime being operated in an arbitrary and *ad hoc* manner. As highlighted above, there is a complete lack of clarity between the different agencies such as the DGFT, MHA and the Delhi Police with regard to the application of the regulatory regime.

50. In our view, this state of confusion is detrimental to the interest of the entire arms industry. Admittedly, the Government of India is seeking to encourage and promote manufacture of arms in India through the 'Make in



India' initiative, for which it is imperative that there is complete clarity with regard to the regulatory regime.

51. In the note handed over by the learned CGSC on 15th May, 2024, it has been specifically stated that the appellants are taking steps for enhancing efficiency and streamlining the processes for the aforesaid purpose. The relevant extracts from the said note are set out below:

“In pursuit of enhancing efficiency and streamlining processes, the harmonisation of application procedure for import license under Form A-10 of the Arms Rules 2016 is being undertaken. A common application form integrating Form A-10 of the Arms Rule with Form ANF-2M of the Foreign Trade Policy has been initiated. The common form is expected to simplify and consolidate the licensing process for arms and ammunition.

The applicant will have to file a single application form. This common form will facilitate single window for decision on application for grant of import licence with DGFT for the issuance of import licenses for arms and ammunition viz. licence in Form-X, and Licence in FTDR Act. Needless to say, the issuance of a license under Form X will only be after due examination under Rule 57(4) of the Arms Rules, 2016.”

52. The above note illustrates that the appellants are conscious of the confusion prevailing in the arms and ammunitions industry. In these circumstances, the only direction that can be passed is that the appellants should complete the above exercise in an expedient manner and thereafter, publicize it widely, including by way of trade notices directed to all stakeholders in the arms and ammunitions industry. It is directed accordingly.

AMIT BANSAL, J.

RAJIV SHAKDHER, J.

AUGUST 29, 2024/kd